

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Tolson Enterprises, Inc. * Case No.
7150 W. Central Ave., Ste. 200
Toledo, OH 43617 * Judge

Plaintiff, *

-vs- *

Build Retail, Inc. *
104 Gannaway St.
Jamestown, NC 27282 *

Defendant. *

COMPLAINT FOR MONEY DAMAGES

PARTIES

1. Tolson Enterprises, Inc. (“Plaintiff”) is an Ohio corporation and real estate developer, duly authorized to transact business in the state of Ohio, with its principal place of business in Lucas County, Ohio.
2. Build Retail, Inc. (“Defendant”) is a North Carolina corporation and licensed general contractor that entered into three (3) separate building contracts with Plaintiff to develop different pieces of commercial real estate located in the state of Ohio.

JURISDICTION & VENUE

3. Jurisdiction is proper under 28 U.S.C. § 1332 as the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00) and complete diversity of citizenship exists between the parties.

4. Venue is proper in the Northern District of Ohio as the contracts at issue in this Complaint are governed by the laws of the state of Ohio and Plaintiff's principal place of business is in Lucas County, Ohio.

GENERAL ALLEGATIONS

5. Plaintiff and Defendant (collectively "the parties") entered into three separate construction contracts.
6. Plaintiff entered into a construction contract with Defendant on February 12, 2021, whereby Defendant agreed to build a 22,400 square foot flex industrial building for One Million Eight Hundred Forty-Five One Hundred Twenty-Three Dollars (\$1,845,123.00) ("Flex Contract"), a copy of which is attached hereto as Exhibit A.
7. Plaintiff entered into a construction contract with Defendant on May 25, 2021, whereby Defendant agreed to complete a retail center front renovation for Nine Hundred Forty-Nine Thousand Seven Hundred Fifty-One Dollars (\$949,751.00) ("Façade Contract"), a copy of which is attached hereto as Exhibit B.
8. Plaintiff entered into a construction contract with Defendant on January 10, 2022, whereby Defendant agreed to complete a tenant buildout for One Million Five Hundred Seventy-Six Thousand Six Hundred Ninety-Five Dollars (\$1,576,695.00) ("Buildout Contract"), a copy of which is attached hereto as Exhibit C.
9. Defendant commenced work on the Flex Contract, Façade Contract, and Buildout Contract, and accepted various progress payments but failed to complete the construction projects in accordance with the terms of their respective contracts.

10. Defendant failed to complete the Flex Contract according to the terms therein, so Plaintiff paid another contractor to complete the project for Forty-Seven Thousand Six Hundred Forty-Six Dollars (\$47,646.00) over contract price.
11. Defendant failed to complete the Façade Contract according to the terms therein, so Plaintiff paid another contractor to complete the project for Ninety-Three Thousand Five Hundred Sixty-Three Dollars (\$93,563.00) over contract price.
12. Defendant failed to complete the Buildout Contract according to the terms therein, so Plaintiff paid another contractor to complete the project for One Million Thirteen Thousand Eight Hundred One Dollars (\$1,013,801.00).
13. Defendant accepted a total sum of One Million Four Hundred Thirty-Four Thousand Five Hundred Twenty-Five (\$1,434,525.00) in progress payments on the Flex Contract.
14. Defendant accepted a total sum of Seven Hundred Forty-Nine Thousand Nine Hundred Sixty-Nine Dollars (\$749,969.00) in progress payments on the Façade Contract.
15. Defendant accepted a total sum of Nine Hundred Thirty-Eight Thousand Four Hundred Thirty-One Dollars (\$938,431.00) in progress payments on the Buildout Contract.

COUNT I—BREACH OF FLEX CONTRACT

16. Plaintiff incorporates each of the foregoing averments as fully rewritten herein.
17. The parties entered into the Flex Contract.
18. Defendant accepted progress payments to complete construction pursuant to the terms of the Flex Contract.
19. Defendant failed to complete construction pursuant to the terms of the Flex Contract.
20. Defendant breached the Flex Contract.

COUNT II—BREACH OF FAÇADE CONTRACT

21. Plaintiff incorporates each of the foregoing averments as fully rewritten herein.
22. The parties entered into the Facade Contract.
23. Defendant accepted progress payments to complete construction pursuant to the terms of the Facade Contract.
24. Defendant failed to complete construction pursuant to the terms of the Facade Contract.
25. Defendant breached the Facade Contract.

COUNT III—BREACH OF BUILDOUT CONTRACT

26. Plaintiff incorporates each of the foregoing averments as fully rewritten herein.
27. The parties entered into the Buildout Contract.
28. Defendant accepted progress payments to complete construction pursuant to the terms of the Buildout Contract.
29. Defendant failed to complete construction pursuant to the terms of the Buildout Contract.
30. Defendant breached the Buildout Contract.

COUNT IV—CONVERSION

31. Plaintiff incorporates each of the foregoing averments as fully rewritten herein.
32. The parties entered into the Buildout Contract.
33. Defendant agreed to complete construction under the terms of the Buildout Contract for
One Million Five Hundred Seventy-Six Six Hundred Ninety-Five Dollars
(\$1,576,695.00).
34. Defendant commenced construction under the terms of the Buildout Contract and
accepted Nine Hundred Thirty-Eight Thousand Four Hundred Thirty-One Dollars
(\$938,431).

35. Defendant failed to use the progress payments on construction for the Buildout Contract.
36. Defendant intentionally absconded with the progress payments that were supposed to be used for the Buildout Contract.
37. Plaintiff paid One Million Thirteen Thousand Eight Hundred One Dollars (\$1,013,801.00) over the agreed upon Buildout Contract price to complete construction under the terms therein due to Defendant's tortious conversion of the progress payments that were supposed to be used for the Buildout Contract.

COUNT V—DAMAGES

38. Plaintiff incorporates each of the foregoing averments as fully rewritten herein.
39. Plaintiff is damaged in sum in excess of **One Million One Hundred Fifty-Five Thousand Ten Dollars (\$1,155,010.00)** for Defendant's breach of the Flex Contract, Façade Contract, and Buildout Contract, and conversion of the progress payments paid for construction under the Buildout Contract.

WHEREFORE, Plaintiff prays the court grant judgment in sum in excess of Seventy-Five Thousand Dollars (\$75,000.00) for damages it shall prove at trial, attorneys' fees and costs herein, and for such other and further relief this court deems just and equitable.

Respectfully submitted,



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